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Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

WILLIAM J. BENSON, JOHN DOE I,
JOHN DOE II, JANE ROE,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether I.R.C. § 6700, the abusive tax shelter statute, abridges freedom of speech when used to censor and tax public dissemination of a compendium of information regarding the constitutional validity of the federal income tax.

2. Whether the Due Process Clause of the Fifth Amendment is violated when a district court finds it lacks jurisdiction to hear and consider a defense to two elements of a cause of action under I.R.C. § 6700, but does have jurisdiction to find in favor of the government on those two elements.

3. Whether I.R.C. § 6700 abridges the right of the people peaceably to assemble when a "customer list" of the purchasers of a compendium of information pertaining to whether the I.R.S. is violating the Constitution is ordered to be submitted to the I.R.S.

4. Whether the right of the people to petition the government for a redress of grievances is abridged when a court uses, as a basis to find a violation of I.R.C. § 6700, the fact that an individual filed a petition for redress of grievance with the I.R.S., i.e., whether the exercise of a fundamental, Constitutionally protected right can be regarded as evidence of a violation of the law.

5. Whether fundamental rights guaranteed by the First Amendment are being chilled by the use of I.R.C. § 6700 to suppress public debate on the entire subject of the constitutional validity of the federal income tax.

List of All Parties

The parties to the action in the District Court were:

United States of America, Plaintiff;

William J. Benson, Defendant;

John Doe I, John Doe II and Jane Roe who moved in the District Court to intervene, of right, as party defendants.[1]

The parties to the action in the Court of Appeals were:

William J. Benson, Appellant and Cross-Appellee;

United States of America, Appellee and Cross-Appellant;

John Doe I, John Doe II and Jane Roe who moved to intervene, as cross-appellees.

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[1] Believing the First Amendment protects the putative intervenors names from disclosure, they proceeded in an alias capacity to preserve that protection.

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Opinions Below

The Opinion of the United States Court of Appeals for the Seventh Circuit, filed April 6, 2009, affirming the Memorandum Opinion of the District Court granting summary judgment, and granting the Cross-Appeal of the United States. *United States v. Benson*, 561 F.3d 718 (7th Cir. 2009). App. A, pp. 1a-21a.

The Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois, Eastern Division, filed April 19, 2005, denying Benson's motion to dismiss the complaint under FED. R. CIV. P. 12(b)(1), 12(b)(6), and 12(b)(7). *United States v. Benson*, 2005 WL 947291 (N.D. Ill. 2005), 95 A.F.T.R.2d 2005-2164, 2005-1 USTC P 50,398.

The District Court's Docket Entry filed January 16, 2008, denying Benson's, the putative intervenors and the United States' motion to alter or amend. App. B, pp. 22a-25a.

The Permanent Injunction issued by the United States District Court for the Northern District of Illinois, Eastern Division, filed January 10, 2008. *United States v. Benson*, 2008 WL 267055 (N.D. Ill. 2008). App. C, pp. 26a-32a.

The Memorandum Opinion of the United States District Court for the Northern District of Illinois, Eastern Division, filed December 17, 2007, granting the United States' Motion for Summary Judgment. *United States v. Benson*, 2007 WL 4838232 (N.D. Ill. 2007), 101 A.F.T.R.2d 2008-422. App. D, pp. 33a-54a.

The Order of the Seventh Circuit Court of Appeals denying Benson's Petition for Rehearing En Banc, filed July 21, 2009. App. E, pp. 55a-56a.

Jurisdiction

The Opinion of the Seventh Circuit sought to be reviewed was filed April 6, 2009. The Order denying the petition for rehearing *en banc* was filed July 21, 2009. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Federal Constitutional and Statutory Provisions Involved

1. U.S. CONST. amend. I reads in relevant part: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

2. U.S. CONST. amend. V reads in relevant part: "No person shall be . . . deprived of life, liberty, or property, without due process of law . . . ."

3. U.S. CONST. art. V reads in relevant part: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, . . . which, . . . shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States . . . ."

4. U.S. CONST. art. III, § 2, reads in relevant part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . to all

Cases to which the United States shall be a Party . . . ."

5. I.R.C. § 6700, reads in pertinent part:

(a) Imposition of penalty.--Any person who--

(1)(A) organizes (or assists in the organization of)--
(i) a partnership or other entity,
(ii) any investment plan or arrangement, or
(iii) any other plan or arrangement, or
(B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and
(2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)--
(A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, or
(B) a gross valuation overstatement as to any material matter, shall pay . . . a penalty
. . . .

6. Rev. Stat. § 205, at the time in question, read: "Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as part of the Constitution of the United States."

Statement of the Case

William J. Benson sold on a website a "compendium of information" consisting of two books he authored, official certified documents he personally obtained from the National Archives and various State Legislatures, publications authored and printed by the federal government, official court transcripts, court opinions, law review articles, letters from attorneys, and correspondence to and from members of Congress. Benson contended these documents show less than thirty-six states had voted to ratify the proposed Sixteenth Amendment according to the provisions of the Constitution. Benson stated the federal judiciary and Congress both contend they lack the authority to hear and adjudicate the matter. Benson urged the following action:

> **Let the people answer the question the government refuses to answer–and let the people preserve our Constitution. We the people must take political action in an attempt to force the government to decide**

a very important question, i.e., "Was the 16th Amendment legally certified and ratified?" If it was not, there is no law which can be violated and therefore, the people are being politically prosecuted.

. . . .

How can we restore the U.S. Constitution? The same way that "Old Ironsides" has always been restored - through the love and devotion of the people of this great land. We must, of course, patch that gaping hole in our Law. Apportionment of income taxes must be restored and the current tyrannical system of taxation administered by the IRS, the courts and the Justice Department, must be abolished immediately and replaced by a thorough and rigid Constitutional system.

There will undoubtedly be vicious resistance on the part of those with a vested interest in keeping the fraudulent status quo. Nevertheless, each of us who hopes that the Constitution survives into the next century must do whatever he or she can do to ensure that it is again made worthy to sail on the seas of sovereignty.

Together we must pledge our lives, our fortunes and our sacred honor to restore our great nation. **We must stand together and take political action to resolve the enormous political question the courts have declared exists as a result of the fraudulent certification and ratification of the**

> **Sixteenth Amendment.** As you read the enclosed material and the Law That Never Was, Volumes I & II by Bill Benson and Red Beckman you will gasp in amazement as you walk through the corridors of time and discover the biggest fraud ever perpetrated on the American People (emphasis added).

District Court Doc. 40, Exhibit K, pp. 8-9.

> Today, the federal government pretends that it has all encompassing power to tax the income of everyone, and that the only way to change this system is to vote for congressmen who promise to modify it. **The American public needs to be apprised that another alternative exists, and that this challenge can be effectively made by exercising your rights under the First Amendment to the United States Constitution** (emphasis added).

District Court Doc. 42, pp. 7-8.

The Department of Justice, Tax Division, alleged the above activities and speech violated I.R.C. § 6700, the "abusive tax shelter" statute, and filed a complaint to enjoin Benson from selling the "compendium of information." The DOJ argued Benson's statement, expounding his "theory" that the Sixteenth Amendment was not ratified, was false and fraudulent, and Benson knew the statement was false

and fraudulent,[2] because the Seventh Circuit has ruled the issue is "nonjudiciable" and "beyond review."[3] The complaint asked the court to issue an injunction and an order requiring Benson to disclose to the government a list identifying everyone who obtained the "compendium of information."

Benson filed a motion to dismiss. He argued that if the issue of the truth or falsity of his statement that

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[2] These are two elements the United States must prove to establish a violation of I.R.C. § 6700. *See United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000).

[3] No court, including the Seventh Circuit, has addressed the merits of Benson's contention that States intentionally amended the language of the proposed Sixteenth Amendment. The courts have held that because the issue is not open to review, there is a conclusive presumption that the Sixteenth Amendment was ratified. In Benson's prior criminal case, the trial court refused to hear the issue, presented not as a good faith defense to wilfulness but to the requirement that he was required to file a tax return, because the Seventh Circuit held the issue was "objectively unreasonable." On appeal of his criminal case, Benson asked the Seventh Circuit to remand to the district court to conduct an evidentiary hearing. That request was denied. The district court and Seventh Circuit here both contend the courts' refusal to address the merits of his argument in his criminal case establishes he knew his statements were false. (*See* App. A, pp. 8a-9a). All Benson learned from previous case law, including his own criminal case, is that the courts refuse to address an alleged constitutional violation of major importance to the America people, which is why he called for the people to engage in political activity. In essence, Benson is being prosecuted for failing to adhere to the ideological conformity of the government. While the subject matter may be different, there is no real distinction between this proceeding and that of the Roman Inquisition that found Galileo guilty when the truth of his statements was not considered because they were blasphemous.

the Sixteenth Amendment was not ratified is "nonjudiciable" and "beyond review," and cannot, therefore, be adjudicated, the court lacked jurisdiction over the subject matter. He argued, in the alternative, that if the court exercised jurisdiction but found his statement was false as a matter of law, the court would violate the Due Process Clause of U.S. CONST. amend. V. Finally, Benson argued that if the judicial branch was precluded from adjudicating an essential element of the alleged offense because the matter was a "political question" that fell within the purview of Congress, due process required Congress be joined as an indispensable party.

Benson's motion to dismiss was denied. The United States then moved for summary judgment. It provided no facts to support its allegation that Benson's statement was false and fraudulent, but instead relied upon the irrebuttable presumption that the statement was false because the Seventh Circuit holds the issue is "nonjudiciable" and "beyond review." The United States argued that because Benson knew about the Seventh Circuit case law, he knew or should have known his statement was false.

In response, Benson filed a FED. R. CIV. P. 56 statement of facts, which facts were supported by the official government documents in his possession. Those documents show, conclusively, that several states intentionally amended the language of the Sixteenth Amendment proposed by Congress, and that the United States admits such conduct violates U.S. CONST. art. V. Benson showed, subtracting the offending states from states that did ratify, that the number of ratifying states was less than the required thirty-six.

Benson also filed a memorandum of law in opposition to the summary judgment. Benson argued that the official government documents created a factual dispute as to substantial matters, whether his statement was true or false and whether he knew it was false, which factual disputes precluded issuance of summary judgment. Benson also argued that his advocacy urging people to exercise rights under the First Amendment was protected political speech that could not be enjoined.

The government, unable to challenge the authenticity of the official government documents, nor the truth of their contents, did not. Instead, it moved to strike Benson's statement of facts as "irrelevant, immaterial, impertinent and scandalous." The district court granted the government's motion and struck Benson's statement of facts.

Thereafter, three individuals, all of whom file tax returns and pay income taxes, filed a motion to intervene. John Doe I, who had purchased Benson's compendium of information, had filed a petition for redress of grievance with the Internal Revenue Service. John Doe II, who had purchased the compendium of information from Benson, did no more than read the material he obtained. Jane Roe wanted to purchase Benson's material but did not because she was afraid of governmental repercussions if she did. The three putative intervenors, as well as Benson, filed a motion for a protective order. They argued that: 1) Benson was engaged in "political speech" that could not be enjoined; 2) Benson's "political speech" could not be converted to "commercial speech" merely because it was sold; 3) no statement on his website was false at the time made; 4) the compendium of information did

not constitute a "partnership or other entity, an investment plan or arrangement, or any other plan or arrangement;" 5) compelled disclosure of the intervenors' names would abridge their rights to engage in lawful association in support of their common beliefs, would have a chilling effect on others, and would subject them to punishment and harassment for engaging in protected speech; 6) the First Amendment protected their right to speak, receive, read and possess Benson's material, and to petition for redress of grievance, without being classified as "tax protesters," being placed on a list of a suspected class of violators of the law, and/or being subjected to criminal investigation and/or civil audit by the Internal Revenue Service for no reason other than they chose to associate with Benson or purchase his material.

Benson also filed a motion asking the district court to exercise its equity jurisdiction since it now concluded that the law required it to direct a verdict in favor of the government as to the issues of whether Benson's statements were false, and he knew they were false. That motion was denied.

Prior to ruling on the motion to intervene or the motion for a protective order, the district court found that Benson failed to point to evidence that would create a genuinely disputed fact regarding whether the Sixteenth Amendment was properly ratified.[4] The court held that prior case law of the Seventh Circuit precluded Benson from arguing the truthfulness of his

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[4] It is impossible to point to evidence when it has been stricken from the record!

position, the question being "nonjudiciable" and "beyond review." The court ruled it was objectively unreasonable for Benson to hold, and advocate, any other opinion than that held by the Seventh Circuit. The court held that Benson's "compendium of information" was a tax shelter, his statement that the Sixteenth Amendment was not ratified was false commercial speech, and Benson knew or should have known his statement was false, and it granted the United States' motion for summary judgment. The District Court did not, however, order Benson to produce the names and addresses of those who obtained his material. The District Court then denied the motions to intervene and for a protective order as moot.

Benson filed a notice of appeal. The putative intervenors did not file a notice of appeal as they had nothing from which to appeal; the court had protected the release of their names. The United States filed a notice of cross-appeal from that portion of the summary judgment refusing production of the list of names and addresses it wanted. The putative intervenors then filed a motion for leave to intervene as cross-appellees to protect the disclosure of their names. A single judge of the Seventh Circuit denied the motion, stating that the putative intervenors should have filed a notice of appeal and didn't, but could file a motion for leave to file an amicus brief if only they disclose their real names in the motion and proposed amicus brief.[5] On a motion for review, a three

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[5] Thereby providing their names and rendering their issues moot.

judge panel denied the motion to intervene and denied a motion to alter the briefing schedule.[6]

The Seventh Circuit Panel sustained the granting of the summary judgment and permanent injunction, and remanded the case to the district court directing it to order Benson to produce the list of the names and addresses the government wanted. Benson filed a timely motion for Rehearing *En Banc*. The motion was denied on July 21, 2009.

REASONS FOR GRANTING THE WRIT

The Use of I.R.C. § 6700 to Censor and Tax Political Speech on the Entire Subject of the Constitutional Validity of the Federal Income Tax Abridges the First Amendment.

The use of tax law to censor and suppress political speech critical of the government has repeatedly been condemned by this Court. *See Grosjean v. Am. Press Co., Inc.*, 297 U.S. 233, 244-250 (1936). Notwithstanding this condemnation, the Seventh Circuit, *en banc*, has sanctioned the district court's use of I.R.C. § 6700 to silence and punish Benson's political speech.

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[6] The motion to alter the briefing schedule was necessary because by the time the Seventh Circuit denied the motion to intervene, the time to file an amicus brief had already expired.

This Court recognizes that:

> **Under the First Amendment there is no such thing as a false idea.** However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.FN8 [emphasis added.]
>
> > FN8. As Thomas Jefferson made the point in his first Inaugural Address: "If there be any among us who would wish to dissolve this Union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."

Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-40 (1974).

Neither the district court, nor the Seventh Circuit, *en banc*, shares this Court's recognition, rather, they expressly reject it.

Congress enacted the abusive tax shelter statute, I.R.C. § 6700, to curb the sale and promotion of fraudulent investment schemes marketed with the false promise that the investment would produce tax savings.[7] The false statements to be penalized were specifically identified as false statements pertaining to

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[7] *See* Joint Committee on Taxation, *Background and Present Law Relating to Tax Shelters* (JCX-19-02), Mar. 19, 2002.

"the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement," I.R.C. §6700(a)(2)(A), or "a gross valuation overstatement," I.R.C. § 6700(a)(2)(B). The statute must be "strictly construed" as it is a penal statute which imposes a monetary penalty. *See Commissioner v. Acker*, 361 U.S. 87, 91 (1959).

Benson's speech that people must utilize the First Amendment to preserve the taxing clauses of the Constitution are not statements reached by I.R.C. §§ 6700(a)(2)(A) or (B), nor does the "compendium of information" he markets constitute a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement reached by I.R.C. § 6700(a)(1)(A).

Urging "political action" in an effort to require the government to address an issue that both Congress[8] and the federal judiciary[9] say they do not have

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[8] Benson's compendium of information contains a letter from Congressman Tom Lantos, stating the issue of the ratification of the 16th Amendment must be heard by the courts because "[n]either the legislative nor administrative branches of government have jurisdiction."

[9] The Seventh Circuit and other court of appeals hold the declaration of a Secretary of State under Rev. Stat. § 205 is conclusive upon the Courts, and review for fraud and violation of U.S. CONST. art. V is precluded by the enrolled bill rule and political question doctrine. *See United States v. Thomas*, 788 F.2d 1250 (7th Cir. 1986); *United States v. Foster*, 789 F.2d 457 (7th Cir. 1986); *United States v. Ferguson*, 793 F.2d 828 (7th Cir. 1986); *Miller v. United States*, 868 F 2d 236 (7th Cir 1988); *Lysiak*

jurisdiction to address does not constitute the sale of an abusive tax shelter. Governmental censorship of 1) documents and speech establishing proof that a fraud was, and is, being committed by the government, and/or 2) a call to advocacy does, however, violate the First Amendment.

This court, in order to assure that rights under the First Amendment are not abridged, is obligated to "make an independent examination of the whole record" in order to make sure that "the judgment does not constitute a forbidden intrusion on the field of free expression." *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). The threshold issue of whether Benson's speech is protected is one of law. *Connick v. Myers*, 461 U.S. 138, 148 n.7 (1983).

> Freedom of speech is "indispensable to the discovery and spread of political truth," *Whitney v. California*, 274 U.S. 357, 375, 47 S.Ct. 641, 648, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring), and "the best test of truth is the

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v. C.I.R., 816 F.2d 311 (7th Cir. 1987); *United States v. Sitka*, 845 F.2d 43 (2d Cir. 1988); *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986); and *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991.) Benson challenged the correctness of these cases in both the district court and the Seventh Circuit, arguing *Marbury v. Madison*, 5 U.S. 137 (1803), mandates judicial review, and to the extent Rev. Stat. § 205 attempts to deprive the judiciary of jurisdiction, it is unconstitutional. *Dickerson v. United States*, 530 U.S. 428, 437 (2000)("Congress may not legislatively supersede our decisions in interpreting and applying the Constitution."). Both courts below failed to address his arguments.

power of the thought to get itself accepted in the competition of the market . . . ." *Abrams v. United States*, 250 U.S. 616, 630, 40 S.Ct. 17, 22, 63 L.Ed. 1173 (1919) (Holmes, J., dissenting). The First and Fourteenth Amendments remove "governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity . . . ." *Cohen v. California*, 403 U.S. 15, 24, 91 S.Ct. 1780, 1786, 29 L.Ed.2d 284 (1971). This Court has emphasized that the First Amendment "embraces at the least the liberty to discuss publicly and truthfully all matters of public concern . . . ." *Thornhill v. Alabama*, 310 U.S. 88, 101-102, 60 S.Ct. 736, 744, 84 L.Ed. 1093 (1940); *see Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1436, 16 L.Ed.2d 484 (1966).

. . . .

The First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic. As a general matter, "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Department of Chicago v. Mosley*, *supra*, at 95, 92 S.Ct., at 2290; *see Cox v. Louisiana*, 379 U.S. 536, 580-581, 85 S.Ct. 466, 469-470, 13 L.Ed.2d 487 (1965) (opinion of Black, J.) . . . If the marketplace of ideas is to

> remain free and open, governments must not be allowed to choose "which issues are worth discussing or debating . . . ." 408 U.S., at 96, 92 S.Ct., at 2290. *See also Erznoznik v. City of Jacksonville*, *supra*, 422 U.S., at 214-215, 95 S.Ct., at 2275; *Tinker v. Des Moines School District*, 393 U.S. 503, 510-511, 89 S.Ct. 733, 738-739, 21 L.Ed.2d 731 (1969). To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.

Consolidated Edison Co. of New York, Inc. v. Pub. Serv. Comm'n of New York, 447 U.S. 530, 534-38 (1980).

> The First Amendment categorically demands that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The right of a man to think what he pleases, to write what he thinks, and to have his thoughts made available for others to hear or read has an engaging ring of universality.

Dennis v. United States, 341 U.S. 494, 520-21 (1951)(Frankfurter, J., concurring).

The fact that Benson distributes his political speech through sales over the Internet does not convert it to commercial speech:

> In addition, plaintiffs' distribution of literature does not lose First Amendment status simply "because the written materials sought to be distributed are sold rather than given away, or because contributions or gifts are solicited in the course of propagating the faith."

Heffron v. Int'l Society for Krishna Consciousness, 452 U.S. 640, 647 (1981). *See also Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66-67 (1983); *New York Times Co. v. Sullivan*, 376 U.S. 254, 265-266 (1964); *Bigelow v. Virginia*, 421 U.S. 809, 818 (1975).

Furthermore, the fact that Benson had an economic motivation for selling his material is clearly not sufficient by itself to turn the materials into commercial speech. *See Bigelow v. Virginia*, 421 U.S. 809, 818 (1975); *Ginzburg v. United States*, 383 U.S. 463, 474 (1966); *Thornhill*, *supra*; *Smith v. People of the State of California*, 361 U.S. 147 (1959).

Commercial speech pertains to advertising. *See 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 495 (1996)("Advertising has been a part of our culture throughout our history. Even in colonial days, the public relied on 'commercial speech' for vital information about the market."). The Seventh Circuit, in order to sustain a finding of false commercial speech, held the material sold contained falsities, thereby extending the commercial speech exception beyond advertising. Whether such expansion violates the First Amendment is an important question of constitutional law that has never been, but should be, addressed by this Court.

Not only does Benson have the right to engage in political speech unhampered by governmental attempts to squelch his message, but there is a corresponding First Amendment right of every citizen to receive it:

> Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. *Martin v. Struthers*, 319 U.S. 141, 146-147 (1943).

Breard v. City of Alexandria, La., 341 U.S. 622, 628 (1951).

> The refusal to allow King to obtain a book on computer programming presents a substantial First Amendment issue. Freedom of speech is not merely freedom to speak; it is also freedom to read. *Stanley v. Georgia*, 394 U.S. 557, 564, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969); *Lamont v. Postmaster General*, 381 U.S. 301, 306-07, 85 S.Ct. 1493, 14 L.Ed.2d 398 (1965); *Conant v. Walters*, 309 F.3d 629, 643 (9th Cir.2002). Forbid a person to read and you shut him out of the marketplace of ideas and opinions that it is the purpose of the free-speech clause to protect.

King v. Fed. Bureau of Prisons, 415 F.3d 634, 638 (7th Cir. 2005) (Posner, J.).

The right to receive the information also includes the right not to be put on a list:

> The addressee carries an affirmative obligation which we do not think the Government may impose on him. This requirement is almost certain to have a deterrent effect, especially as respects those who have sensitive positions. Their livelihood may be dependent on a security clearance. Public officials like schoolteachers who have no tenure, might think they would invite disaster if they read what the Federal Government says contains the seeds of treason. Apart from them, any addressee is likely to feel some inhibition in sending for literature which federal officials have condemned as "communist political propaganda." The regime of this Act is at war with the "uninhibited, robust, and wide-open debate and discussion that are contemplated by the First Amendment." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 720, 11 L.Ed.2d 686.

Lamont v. Postmaster General of United States, 381 U.S. 301, 307 (1965).

So too, the recipients of Benson's message have a protected First Amendment Right to petition the government for redress of grievance. The Seventh Circuit used the fact that at least one taxpayer submitted the compendium of information to the IRS when questioned about failing to file an income tax return to find "Benson did organize a plan or arrangement and participated in the sale of an interest in the plan or arrangement." *Benson*, 561 F.3d at 722 (App. A, p. 7a). Such finding violates the First Amendment to the United States Constitution:

> Resort to administrative, legislative, political or judicial processes is protected by the first amendment so long as the petitioner is concerned with obtaining relief afforded by the system. *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 111 S.Ct. 1344, 113 L.Ed.2d 382 (1991); *California Motor Transport. Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972); *Noerr*, 365 U.S. 127, 81 S.Ct. 523. Even if the seeking of relief is animated by malevolence or self-interest, the first amendment protects the right to petition of the person whose activities are genuinely aimed at procuring favorable government action. *Omni*, 111 S.Ct. at 1354 (*quoting Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 500 n. 4, 108 S.Ct. 1931, 1937 n. 4, 100 L.Ed.2d 497 (1988)).

Leblanc Sternberg v. Fletcher, 781 F. Supp. 261, 266 (S.D.N.Y. 1991); *Dennis, supra.*

The right to petition is inseparable from the right to speak. *See McDonald v. Smith*, 472 U.S. 479, 482 (1985) (characterizing right to petition as "an assurance of a particular freedom of expression"); *Day v. South Park Indep. Sch. Dist.*, 768 F.2d 696 (5th Cir. 1985) (right to petition is governed by "public concern" analysis of Pickering), *cert. denied*, 474 U.S. 1101 (1986).

The Seventh Circuit found that because some readers of Benson's material relied upon it to decide not to file income tax returns, Benson's speech must be enjoined. The finding is erroneous:

> The fact that some misguided participants or spectators at the rally may "turn in" their draft cards, as symbolic of their disapproval of the Vietnam War, does not justify the denial of the right of citizens to express views which may provoke such conduct. Any individual who, by his voluntary act, surrenders his draft card, can be effectively prosecuted under existing federal law. That potential provocation may result from heated debate is not a valid reason to preclude discussion.

Resistance v. Comm'rs of Fairmont Park, City of Philadelphia, Pa., 298 F. Supp. 961, 963 (E.D. Pa. 1969).

The fact that some recipients of Benson's material may not file income tax returns does not justify the denial of the right of Benson to express views which may provoke such conduct, nor the right of others to receive the material. Unless Benson's speech is directed toward advocacy of inciting or producing imminent lawless action and is likely to incite or produce such action, it remains fully protected political speech. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). There is no evidence anywhere within the record below that Benson advises anyone not to file tax returns or that he otherwise incites imminent lawless action.

So too, there is a First Amendment right to associate for the purpose of engaging in the other activities protected by the First Amendment. *See Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984). The IRS's contemplated investigation of citizens for the mere possession of Benson's literature

also violates perhaps the greatest liberty of all, the right to be let alone by government:

> It is now well established that the Constitution protects the right to receive information and ideas. "This freedom [of speech and press] . . . necessarily protects the right to receive . . . ." *Martin v. City of Struthers*, 319 U.S. 141, 143, 63 S.Ct. 862, 863, 87 L.Ed. 1313 (1943); *see Griswold v. Connecticut*, 381 U.S. 479, 482, 85 S.Ct. 1678, 1680, 14 L.Ed.2d 510 (1965); *Lamont v. Postmaster General*, 381 U.S. 301, 307-308, 85 S.Ct. 1493, 1496-1497, 14 L.Ed.2d 398 (1965) (Brennan, J., concurring); *cf. Pierce v. Society of the Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925). This right to receive information and ideas, regardless of their social worth, *see Winters v. New York*, 333 U.S. 507, 510, 68 S.Ct. 665, 667, 92 L.Ed. 840 (1948), is fundamental to our free society. Moreover, in the context of this case--a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home--that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy. "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the

> government, the right to be let alone-the most comprehensive of rights and the right most valued by civilized man." *Olmstead v. United States*, 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting). *See Griswold v. Connecticut*, *supra*; *cf. NAACP v. Alabama*, 357 U.S. 449, 462, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488 (1958).

Stanley v. Georgia, 394 U.S. 557, 564 (1969).

The chilling effect of governmental efforts to obtain the names of members of a group who engage in advocacy is readily apparent. *See United States v. Grayson County State Bank*, 656 F.2d 1070, 1074 (5th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982); *In re First Nat'l Bank, Englewood, Co.*, 701 F.2d 115, 118 (10th Cir. 1983). *See also NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)(reversing compelled disclosure of membership list) and *Gibson v. Fla. Leg. Investigation Comm.*, 372 U.S. 539, 544 (1963)(holding compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on freedom of association); *Thornhill v. State of Alabama*, 310 U.S. 88, 101-102 (1940)("The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.").

Applied to the facts of this case, I.R.C. § 6700 abridges the First Amendment and constitutes an unconstitutional enlargement of the commercial speech exception. These are important questions of federal law that have not been, but should be, decided by this Court.

Denying Benson a Defense and Refusing to Address His Legal Arguments Violates the Due Process Clause of the Fifth Amendment.

This Court has succinctly ruled the federal judiciary has an obligation to review the administrative acts imposed by legislation upon a Cabinet official to insure such acts do not violate the Constitution of the United States. *See Marbury v. Madison*, 5 U.S. 137 (1803). The district court disagrees, and its disagreement has been sanctioned by the Seventh Circuit, *en banc*. Both the district court and the Seventh Circuit have refused to address Benson's argument that the interpretation of Rev. Stat. § 205 to prevent judicial review of the fraudulent acts of a Secretary of State is repugnant to U.S. CONST. art. III, § 2. This is also an important question of federal law that has not been, but should be, decided by this Court.

This Court has repeatedly held that an element of an offense, such as the factual question of whether a statement is false or the speaker knew it was false, cannot be sustained by resort to an irrebuttable presumption.[10] The district court disagrees, and its disagreement has been sanctioned by the Seventh Circuit, *en banc*.

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[10] *See Sandstrom v. Montana*, 442 U.S. 510, 521-523 (1979); *Stanley v. Illinois*, 405 U.S. 645, 654-657 (1972); *Heiner v. Donnan*, 285 U.S. 312, 325-29 (1932); *Schlesinger v. State of Wisconsin*, 270 U.S. 230 (1926); *Tot v. United States*, 319 U.S. 463, 468-69 (1943); *Vlandis v. Kline*, 412 U.S. 441, 446 (1973), *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19 (1999), and *Jones v. Bolles*, 76 U.S. 364, 368 (1869).

Rev. Stat. § 205 placed an administrative duty on Secretary of State Knox to review the "official notices" of the various States regarding their action on the proposed Sixteenth Amendment. The "official notices" submitted by the States consisted of the duly-enrolled Senate, House or concurrent resolutions, signed by the appropriate officials of the States' legislative bodies, and placed in the custody of each State's Secretary of State. As such, the "official notices" are no different than a federal "enrolled bill," which this Court holds is conclusive as to what was passed by legislative action. *See Field v. Clark*, 143 U.S. 649 (1892); *Leser v. Garnett*, 258 U.S. 130 (1922); and *Coleman v. Miller*, 307 U.S. 433 (1939). Benson advocates the official documents he obtained from the National Archives shows Secretary of State Knox ignored the duly-enrolled resolutions submitted by the States, and instead fraudulently and conspiratorially relied on a series of false presumptions to declare that the taxing clauses of the Constitution were amended:

> Furthermore, under the provisions of the Constitution **a legislature is not authorized to alter in any way the amendment proposed by Congress**, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. It, therefore, **seems a necessary presumption**, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do, but rather that it intended to do something that it had the power to do, namely, where its action has been affirmative, to ratify the amendment proposed by Congress. **Moreover, it could not be presumed that by**

> **a mere change of wording, probably inadvertent**, the legislature had intended to reject the amendment as proposed by Congress where all parts of the resolution other than those merely reciting the proposed amendment had set forth an affirmative action by the legislature (emphasis added).

Memo from the Office of the United States Solicitor to Secretary of State Knox, Feb. 15, 1913, District Court Doc. 11, pp. 9-10; Doc. 69, pp. 19-20.

Benson presented facts showing the language contained in the "official notices" were not "inadvertent errors," but the result of deliberate amendment by the legislatures of the various States. No prior decision of any district court, any court of appeals, nor this Court, has ever addressed the effect of a State intentionally amending the language of a proposed constitutional amendment. This is an important question of constitutional law that has not been, but should be, settled by this Court.

Benson argued that the lower courts' interpretation of Rev. Stat. § 205, which interpretation allows the Constitution to be amended by two false presumptions, rather than by the actual ratification of thirty-six states, constituted a congressional amendment of the requirements of U.S. CONST. art. V. Both the district court and the Seventh Circuit refused to address this issue, thereby denying Benson due process. The Seventh Circuit's willingness to allow the Constitution to be amended by false presumption, and its contention that it has no judicial authority to review the issue, constitutes such a departure from the usual course of judicial proceedings as to warrant the

exercise of the supervisory power of this Court. Rather than applying the law as announced by this Court in *Field, supra; Leser, supra; and Coleman, supra,* the Seventh Circuit converted an administrative declaration of ratification by Secretary of State Knox into an "enrolled bill," and held the "enrolled bill rule" and the "political question doctrine" established conclusive presumptions that Benson's statement regarding the Sixteenth Amendment was false and fraudulent, and that he knew it was false. The use of these artificially concocted, conclusive presumptions, denied Benson due process.

Each of these arguments was raised in the district court and the Seventh Circuit. The United States failed to brief the arguments in either court. Both courts failed to address the arguments. The failure to even address legal arguments is a denial of due process;[11] denial of due process is such a fundamental departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

CONCLUSION

The fact that the United States felt compelled to enjoin Benson is proof that his ideas, supported by the documents he sells to support his ideas, is gaining acceptance in the marketplace of ideas. Assuming the lower courts are correct that his ideas regarding

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[11] *See Washington v. Texas*, 388 U.S. 14, 19 (1967). Both parties to a law suit "have a constitutional right to be heard on their claims, and the denial of that right to them is the denial of due process which is never harmless error." *See Matter of Boomgarden*, 780 F 2d 657, 661 (7th Cir. 1985).

whether the Sixteenth Amendment was ratified is a "political question" that cannot be litigated by the courts, then his speech urging the American people to use the First Amendment to force the government to correct what he perceives to be a violation of the Constitution is certainly protected "political speech."

The denial of due process also establishes Benson's speech is protected political speech. Under the First Amendment, the government is not only precluded from determining that it is objectively unreasonable for a person to disagree with the official governmental position, but it is precluded from punishing that belief with a penalty tax. The application of the penalty provisions of I.R.C. § 6700 to the facts herein constitutes a tax on Benson's exercise of his right to freedom of speech. The amount of the penalty/tax, under the statute, is determined in direct relationship to the number of people with whom Benson associated and shared his speech. Such a penalty/tax is prohibited by the Constitution. *See Grosjean, supra.* In the context of this case, to the extent I.R.C. § 6700 authorizes such a penalty/tax, the section is overbroad and abridges the First Amendment.

While respect must be given to the legislative intent to curb abusive tax shelters, so too respect must be given to the right of the people to advocate against the income tax on the grounds that it is being fraudulently imposed upon the people. It is incumbent that this Court grant certiorari to weigh the competing interests to insure the Constitution is not violated:

> Mr. Justice Brandeis was even more pointed in his concurrence in *Whitney v. California*, 274 U.S. 357, 378-379, 47 S.Ct. 641, 649, 71 L.Ed.

> 1095 (1927): "[A legislative declaration] does not preclude enquiry into the question whether, at the time and under the circumstances, the conditions existed which are essential to validity under the Federal Constitution . . . . Whenever the fundamental rights of free speech and assembly are alleged to have been invaded, it must remain open to a defendant to present the issue whether there actually did exist at the time a clear danger; whether the danger, if any, was imminent; and whether the evil apprehended was one so substantial as to justify the stringent restriction interposed by the legislature."
>
> A legislature appropriately inquires into and may declare the reasons impelling legislative action but the judicial function commands analysis of whether the specific conduct charged falls within the reach of the statute and if so whether the legislation is consonant with the Constitution. Were it otherwise, the scope of freedom of speech and of the press would be subject to legislative definition and the function of the First Amendment as a check on legislative power would be nullified.

Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 843-44 (1978).

Another compelling reason this Court should grant certiorari is that the Benson case is but a test case for launching the Department of Justice, Tax Division's, "Tax Defier Initiative," which is nothing short of a declaration of war against those who would debate and

contest the fundamental validity of the tax laws.[12] Immediately after the release of the initiative, the government filed *United States v. Pinnacle Quest International*, Case No. 3:08-cv-00136 (N.D. Fla., Pensacola Div. filed Apr. 7, 2008), wherein it was alleged that selling speech on audio CDs, and tickets to attend lectures, where people peacefully assembled and heard speeches on the issue of taxes and a wide variety of other subjects, constituted an abusive tax shelter. This was followed by *United States v. Hirmer*, Case No. 3:08-cr-70 (N.D. Fla., Pensacola Div. filed Aug. 21, 2008), now pending, wherein those who formed and operated PQI have been charged with several felonies for promoting "anti-government" views on taxation, such as the view that the Sixteenth Amendment was not ratified in accordance with the requirements of U.S. CONST. art. V. *See Hirmer*, *id.*, Indictment, Doc. 3, filed 8/21/08).

The Benson case is a pernicious attack on the First and Fifth Amendments; it condones censorship through taxation. The departure from fundamental concepts of due process, the right to present evidence and defend, coupled with the lower courts' refusal to acknowledge and be bound by prior precedent of this Court, as well as the need for this Court to address

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[12] "WASHINGTON - Today Nathan J. Hochman, Assistant Attorney General of the Justice Department's Tax Division, announced the creation of the National Tax Defier Initiative or TAXDEF. The purpose of this initiative is to reaffirm and reinvigorate the Tax Division's commitment to investigate, pursue and, where appropriate, **prosecute those who take concrete action to defy and deny the fundamental validity of the tax laws.**" *See* http://www.usdoj.gov/opa/pr/2008/April/08_tax_275 (emphasis added).

questions of first impression vitally important to the American people, are all grounds why the petition for writ of certiorari should be granted.

Respectfully Submitted,

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APPENDIX

APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

Nos. 08-1312 and 08-1586

[Filed April 6, 2009]

UNITED STATES OF AMERICA,	)
Plaintiff-Appellee,	)
Cross-Appellant,	)
	)
v.	)
	)
WILLIAM J. BENSON,	)
Defendant-Appellant,	)
Cross-Appellee.	)
	)

Appeals from the United States District Court
for the Northern District of Illinois,
Eastern Division.
No. 04 C 7403—**Samuel Der-Yeghiayan**, *Judge.*

ARGUED OCTOBER 28, 2008
DECIDED APRIL 6, 2009

Before BAUER, RIPPLE and EVANS, *Circuit Judges.*

BAUER, *Circuit Judge.* The district court enjoined William J. Benson, a "tax protester," from promoting,

organizing, or selling his "Reliance Defense Package" and "16th Amendment Reliance Package," which were based on the false premise that customers could stop paying federal income taxes and avoid or defeat prosecution by relying on the materials in the Packages. However, the court denied the government's request to require Benson to divulge a list of his customers. We affirm the injunction, but reverse as to the customer list, and remand for further appropriate proceedings.

I. BACKGROUND

Benson wrote a book titled, *The Law That Never Was*, in which he claims that the Sixteenth Amendment to the United States Constitution was never properly ratified. Benson packaged his book with several excerpts from state legislative histories and records from the national archives as well as court cases and other materials to create what he called the "Reliance Defense Package." He advertised the Package and its component parts for sale on his website, www.thelawthatneverwas.com. The entire Package was offered for sale for $3500. Benson branded a similar set of materials as the "16th Amendment Reliance Package," which was promoted and offered for sale on the website of the Free Enterprise Society.

The details of Benson's promotional claims will be more thoroughly discussed below, but they can be boiled down to two theories. Benson's first and primary theory was that the Sixteenth Amendment was never properly ratified because several states intentionally attempted to modify the language of the proposed amendment and so did not ratify the actual

amendment proposed by Congress. Without the Sixteenth Amendment, Benson explained, the federal income tax system is unconstitutional according to the Supreme Court. *See Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895). Benson stated that he does not file an income tax return and that his customers may choose to do the same.

Benson's second theory, which was alluded to on Benson's website and more thoroughly discussed in the Reliance Defense Package itself, was that an individual could not be successfully prosecuted if he truly believed he was not required to pay income taxes. Benson claimed that the Supreme Court held in *Cheek v. United States*, 498 U.S. 192 (1991) "that when a defendant had a good-faith belief he was not required to file, he must be permitted to present that belief to the jury." Benson also cited *United States v. Powell*, 955 F.2d 1206 (9th Cir. 1991) for the principle that the defendants' conviction for failing to file tax returns "**could not be sustained if the [defendants] sincerely believed they were not required to file—whatever their foundation for that belief.**" And Benson promised that the Reliance Defense Package would allow customers to develop that sincere belief.

At the government's request, the district court granted summary judgement and issued an injunction against Benson; however the district court denied the

part of the requested injunction that would have required Benson to turn over his customer list.[1]

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[1] The injunction reads in part:

> The defendant, William J. Benson, individually and doing business as Constitutional Research Associates, and anyone in active concert or participation with him, are permanently enjoined from:
>
> (a) promoting, organizing or selling the "Reliance Defense Package" or "16th Amendment Reliance Package," which are abusive tax shelters, plans, or arrangements that advise or assist customers to attempt to evade the assessment or collection of their correct federal tax;
>
> (b) promoting, organizing or selling (or helping others to promote, organize, or sell) any other tax shelter, plan, or arrangement that incites or assists others to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities or unlawfully claim improper tax refunds;
>
> (c) making or furnishing (in connection with organizing, promoting, or selling any plan or arrangement) false statements about the excludability of any income or the securing of any other tax benefit by reason of participating in the plan or arrangement;
>
> (d) engaging in any other activity subject to penalty under the Internal Revenue Code; and
>
> (e) engaging in any other conduct that interferes with the administration or enforcement of the internal revenue laws.

II. DISCUSSION

On appeal, Benson claims that he did not violate the statute the district court relied on to grant the injunction. He also argues that the injunction violates his First Amendment rights. The government counters that there was ample statutory and constitutional support for the injunction. The government's cross-claim contends that the district court erred by not requiring Benson to produce a list of his customers. We review a district court's grant of summary judgment *de novo* and its decision to grant an injunction for abuse of discretion. *United States v. Raymond*, 228 F.3d 804, 810 (7th Cir. 2000); *United States v. Kaun*, 827 F.2d 1144, 1148 (7th Cir. 1987).

A. Statutory Authority for the Injunction

A district court is authorized to enter an injunction against any person if it finds "(1) that the person has engaged in any [conduct subject to penalty under 26 U.S.C. § 6700], and (2) that injunctive relief is appropriate to prevent recurrence of such conduct." 26 U.S.C. § 7408(b).

1. Violation of 26 U.S.C. § 6700

Section 6700 imposes a penalty on any person who (1) organizes (or assists in the organization of) any plan or arrangement, or participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement, and (2) in connection with such organization or sale, makes or furnishes a statement with respect to the allowability of any deduction or credit, the excludability or any income, or the securing of any other tax benefit by reason of holding an

interest in the entity or participating in the plan or arrangement (3) which the person knows or has reason to know is false or fraudulent (4) as to any material matter. 26 U.S.C. § 6700(a).

Benson claims that he was simply urging political action and was not promoting any plan because he did not engage in affirmative conduct such as offering to help prepare trusts, false W-4 forms, false income tax returns, letters to harass the IRS, claims for tax refunds, etc., as some tax protestors have in the past. Benson is wrong, both legally and factually.

First, the definition of a plan for purposes of § 6700 is broad. *Raymond*, 228 F.3d at 811 ("any 'plan or arrangement' having some connection to taxes" (citing *Kaun*, 827 F.2d at 1147)). Courts have not been hesitant in finding tax protesters' activities to qualify as plans. *Kaun*, 827 F.2d at 1148 ("words 'any other plan or arrangement' are clearly broad enough to include a tax protester group"); *Raymond*, 228 F.3d at 811-12 (sale of program that told customers they could legally refuse to pay federal income tax was sale of an interest in a plan under § 6700); *United States v. Schulz*, 529 F. Supp. 2d 341, 348 (N.D.N.Y. 2007) (instruction guide on stopping employer withholdings was plan or arrangement), *aff'd*, 517 F.3d 606, 607 (2d Cir. 2008). Benson's plan was simpler than some prior tax protester schemes, but its purpose was the same—to evade tax liability. Instead of filing false tax returns, Benson's plan encouraged customers not to file a tax return at all. Such a *don't*-do-it-yourself kit does not require forms or filings. Here, the devil is not in the details. Like every other tax protester, Benson was selling an illegal method by which to avoid paying taxes; the details of that method are immaterial.

Second, Benson's materials were prepared in such a way so that the entirety of either Package could be sent to the IRS if they began an investigation. The Reliance Defense Package included a customized Reliance Letter, which concluded:

> It is insanely unrealistic for someone like [**customer's name**] to believe that he would be required to file any forms with any state taxing agency or the Federal Government, when the 16th Amendment to the U.S. Constitution is an absolute complete total fraud as proven by **The Law That Never Was** Volume I and in excess of 17,000 documents etc. that [**customer's name**] **relies on as his STATE OF MIND, FRAME OF MIND RELIANCE, AND BELIEF.** The entire Reliance Program shall become a part of his permanent record.

Therefore, Benson was providing his customers with something to send to the IRS in an effort to avoid paying taxes. At least one taxpayer submitted the Reliance Letter and several other elements of the Reliance Defense Package along with the entire 16th Amendment Reliance Package to the IRS when questioned about failing to file an income tax return. The only distinction between Benson's plan and other plans is that Benson's materials were to be utilized after the IRS launched an investigation. So Benson *did* organize a plan or arrangement and participated in the sale of an interest in the plan or arrangement. 26 U.S.C. § 6700(a)(1).

Benson made numerous statements about the tax benefits to be enjoyed by customers as a result of purchasing his materials and participating in his plan

or arrangement. 26 U.S.C. § 6700(a)(2)(A). In promoting his materials, Benson claimed that he "discovered that the 16th Amendment was not ratified" and to have documents "proving that the 16th Amendment . . . is an absolute, complete, total fraud." Benson also claimed on his website that:

> After serving time in federal prison for not paying his United States income taxes, Bill Benson still does not pay income taxes and yet our federal government chooses not to arrest him. Why? Because now he can use this book, which he has written: 'THE LAW THAT NEVER WAS' in his defense.

Benson marketed the Reliance Defense Package on his website as a "compendium of information giving you the education and choice toward not filing an Income tax return. This compendium will give you the education to say '**Based** on my **state-of-mind, frame of mind, reliance** and **belief** I am obeying the dictates of Constitutional Law.'" Benson boasted that "[t]o date, the IRS has steadfastly refused to prosecute any person standing on this defense. Why do they do this? **Because they know they cannot win!!**" Benson also stated that "**included in your Package will be numerous DVDs and many other references proving that you are not a taxpayer!**"

Benson knew or had reason to know that his statements were false or fraudulent. 26 U.S.C. § 6700(a)(2)(A). Benson's claim to have discovered that the Sixteenth Amendment was not ratified has been rejected by this Court in Benson's own criminal appeal. *United States v. Benson*, 941 F.2d 598, 607 (7th Cir. 1991) ("In *Thomas*, we specifically examined the

arguments made in *The Law That Never Was*, and concluded that 'Benson . . . did not discover anything.'" (quoting *United States v. Thomas*, 788 F.2d 1250, 1253 (7th Cir. 1986))). "[W]e have repeatedly rejected the claim that the Sixteenth Amendment was improperly ratified. One would think this repeated rejection of Benson's Sixteenth Amendment argument would put the matter to rest." *Benson*, 941 F.2d at 607 (citations omitted).

Benson knows that his claim that he can rely on his book to prevent federal prosecution is equally false because his attempt to rely on his book in his own criminal case was ineffective. *Benson*, 941 F.2d at 607. Benson's book has been repeatedly discredited by the courts. *Miller v. United States*, 868 F.2d 236, 241 (7th Cir. 1989) ("We find it hard to understand why the long and unbroken line of cases upholding the constitutionality of the sixteenth amendment generally, and those specifically rejecting the argument advanced in *The Law That Never Was*, have not persuaded Miller and his compatriots to seek a more effective forum for airing their attack on the federal income tax structure." (citations omitted)).

Benson's statement that the government cannot successfully prosecute any person choosing not to file a tax return based on his belief that he is obeying the dictates of constitutional law is also false. This argument seems to be derived from *Cheek v. United States*, 498 U.S. 192 (1991), as discussed above. But *Cheek* only supports a defense that the defendant misunderstood the requirements of the tax code, not that he believed those requirements to be unconstitutional. *Id.* at 205-06 ("Claims that some of the provisions of the tax code are unconstitutional are

submissions of a different order [from a good-faith misunderstanding of the law]. . . . [D]efendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness . . . ."); *United States v. Dunkel*, 927 F.2d 955, 955-56 (7th Cir. 1991) (stating that *Cheek* held that "judges may rebuff defenses based on erroneous constitutional beliefs (such as that the 16th Amendment was not properly ratified)").

Benson argues that because he made no false statements, materiality is not at issue. We obviously disagree with Benson's premise and so must decide whether Benson's false statements pertained to a material matter. 26 U.S.C. § 6700(a)(2)(A). There is no matter more material to the sale of a tax avoidance package than whether the package effectively allows customers to avoid taxes. Benson's program was organized and promoted as a golden ticket whereby purchasers could avoid income tax liability and criminal liability. Benson's false statements regarding the vulnerability of the Sixteenth Amendment and the ability of his customers to refuse to pay taxes without being prosecuted were material because they would have a "'substantial impact' on the decision to purchase [his] tax package." *United States v. Gleason*, 432 F.3d 678, 683 (6th Cir. 2005) (citing *United States v. Buttorff*, 761 F.2d 1056, 1062 (5th Cir. 1985); *see also United States v. White*, 769 F.2d 511, 515 (8th Cir. 1985) (material because "taxpayers who have been or are now being audited by the IRS or are involved in litigation because they relied upon appellant's representations should certainly have been informed about their complete lack of merit"). Even if some of Benson's followers purchased the Packages for educational purposes or to take political action, as

Benson claims, it is hard to believe they would have bought the materials knowing they were false.

2. Likelihood of Recurrence

In determining whether an injunction is appropriate to prevent recurrence of the illegal conduct, the court must consider the totality of the circumstances including:

> (1) the gravity of harm caused by the offense; (2) the extent of the defendant's participation and his degree of scienter; (3) the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such [a] transaction; (4) the defendant's recognition of his own culpability; and (5) the sincerity of his assurances against future violations.

Raymond, 228 F.3d at 813 (quoting *Kaun*, 827 F.2d at 1149-50) (internal quotations omitted). Lengthy discussion of this matter is not warranted. Reliance on Benson's false promises has deprived the government of revenue and has harmed Benson's customers who were deceived by the "siren call of the tax protester movement." *United States v. Engh*, 330 F.3d 954, 956 (7th Cir. 2003). Benson was at the heart of this scheme, which he knew or should have known had been thoroughly rejected by the courts. His violation of § 6700 was not isolated, but continuous since his false assurances about the efficacy of his products were posted on his website. Benson does not acknowledge his culpability, and, despite any assurances to the district court, he is not likely to stop without an injunction. The district court adequately examined the

necessary factors and did not abuse its discretion in concluding that an injunction was necessary. *See Kaun*, 827 F.2d at 1148.

B. First Amendment

Of course, even though the injunction was properly granted under 26 U.S.C. § 7408, it still must meet the standards of the First Amendment. Benson claims that the injunction is a violation of his constitutional right to engage in political expression and that the government is trying to squelch his view that the Sixteenth Amendment was never ratified. The government contends that the injunction enjoins false commercial speech, which receives no First Amendment protection.

The First Amendment provides broad protection to speech, but not all speech. Commercial speech receives lesser protection and false or misleading commercial speech receives no protection at all. *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 562-63 (1980). "For commercial speech to come within [the protection of the First Amendment], it at least must concern lawful activity and not be misleading." *Id.* at 566. When deciding if speech is commercial, appropriate considerations include whether: (1) the speech is an advertisement; (2) the speech refers to a specific product; and (3) the speaker has an economic motivation for the speech. *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66-67 (1983).

There is some debate about what the injunction in this case actually prohibits. Benson repeatedly asserts that it prevents him from distributing court opinions,

legislative journals, and other public records, and from speaking about or expressing an opinion about those documents. We interpret the injunction as the government did at oral argument: that it prohibits "false statements made in connection with the sale of a product." The government clarified that the injunction does not prevent Benson from promoting his opinion in the public square. Neither is Benson prohibited from selling his book, *The Law That Never Was*, according to the government's brief.[2] Therefore, Benson is not prohibited from distributing his opinion that the Sixteenth Amendment was not ratified or public documents that he believes support his claim—both of which are contained in his book.

What Benson is prohibited from is engaging in unprotected false commercial speech. This interpretation is evidenced in the language of the injunction the government originally requested, prohibiting Benson

> from directly or indirectly, *by means of false, deceptive, or misleading commercial speech*:
>
> > (1) Organizing, promoting, marketing, or selling . . . the tax shelter, plan, or arrangement known as "The Reliance Defense Package," or any other abusive tax shelter, plan or arrangement that incites taxpayers to attempt to violate the internal revenue laws . . . ;

---

[2] While Benson may sell his book, he may not promote its sale by claiming the ability to rely on it to avoid prosecution as he used to do on his website, or by making any other false promises.

> (2) Engaging in any conduct subject to penalty under IRC § 6700, *i.e.*, making or furnishing, in connection with the organization or sale of an abusive tax shelter, plan, or arrangement, a statement [he] know[s] or [has] reason to know is false or fraudulent as to any material matter; and
>
> (3) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws;

(emphasis added). We read the injunction issued in this spirit. Therefore, the injunction prohibits "only false, deceptive or misleading commercial speech that is related to the provision of tax advice." *Raymond*, 228 F.3d at 815 (citing *Kaun*, 827 F.2d at 1152).

Benson was engaged in false commercial speech. As detailed above, Benson made many false statements about the benefits of buying his materials. Specifically, Benson promised potential customers that his products would free them from taxation and protect them from, or defend them in the event of, prosecution. These false statements were made for the purpose of promoting the sale of his materials and were therefore commercial. Benson purported to be selling a way to avoid tax liability; what he was actually selling was a way to increase tax and criminal liability for failing to pay taxes. That is false advertising, which may be banned consistent with the First Amendment. *In re R.M.J.*, 455 U.S. 191, 203 (1982) ("Misleading advertising may be prohibited entirely."); *see United States v. Schiff*, 379 F.3d 621, 630 (9th Cir. 2004) ("An advertisement is fraudulent when it misleads customers about the benefit of the offered product.").

To the extent that the injunction prohibits Benson from actually selling the Packages, as opposed to falsely advertising for their sale, this is appropriate because the sale of the Packages inherently involves false commercial speech. Their very names, Reliance Defense Package and 16th Amendment Reliance Package, imply that a customer may properly rely on the materials he is about to buy. And since the customer must know that he is buying information about taxes, he is being made to believe that he is buying a theory or defense on which he may rely as it pertains to his taxes. This belief is false. "Because the injunction at issue merely restrains [Benson] from advertising, marketing, and selling materials that are based on false and misleading theories under the guise of tax advice, [Benson's] First Amendment claim fails." *Kaun*, 827 F.2d at 1152.

Benson argues that he was simply encouraging the public to take political action. Nothing in this opinion prohibits him from doing as much. The government explains in its brief that the injunction "leaves Benson free to communicate a political message." Benson may openly share his views about the ratification of the Sixteenth Amendment or the tyranny of the federal government and IRS. It is not illegal for Benson to urge his followers to take political action. What is illegal, and enjoined, is for Benson to try to sell something he does not posses --the golden ticket of tax evasion without consequences. Therefore, according to our great tradition of tolerating nutty opinions, the marketplace of ideas remains open to Benson; the commercial marketplace, however, is appropriately limited to speech that is not deceptive. *See Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771-72 (1976) (First

Amendment "does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely").[3]

C. Customer List

The government contends that the district court should have required Benson to provide the government with a list of names and identifying information of persons who purchased the Reliance Defense Package or the 16th Amendment Reliance Package from Benson. Benson argues that the district court acted properly because requiring him to turn over his customer list is not authorized by any statute and would violate the First and Fifth Amendments. We review a district court's decision to grant or deny an injunction for an abuse of discretion. *Kaun*, 827 F.2d at 1148. However, "[a] district court by definition abuses its discretion when it makes an error of law." *Koon v. United States*, 518 U.S. 81, 100 (1996).

The district court denied the requested customer list order because it determined the order was not related to preventing future misconduct by Benson and was beyond the scope of Benson's wrongdoing.

---

[3] Because we find that the injunction properly enjoins Benson from engaging in false or misleading commercial speech, we do not need to consider the alternate theory of whether the injunction is proper because it prohibits commercial "speech proposing an illegal transaction, which a government may regulate or ban entirely." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 496 (1982) (citations omitted); *Buttorff*, 761 F.2d at 1066 ("Appellant's promotion of his trust does advocate the attempt to take tax benefits repeatedly declared invalid by the courts.").

Whether true or not, the district court's observations are not relevant under the applicable law. District courts possess jurisdiction under 26 U.S.C. § 7402(a) to "issue . . . writs and orders of injunction . . . and such other orders . . . as may be necessary or appropriate for the enforcement of the internal revenue laws."[4]

The government has identified seven individuals who have received Benson's materials and have failed to file income tax returns. Reliance on Benson's materials has and will continue to irreparably harm Benson's customers, who have exposed themselves to increased tax and criminal liability, and the government, which is "not receiving required tax payments and [is] forced to expend resources to [identify and] collect the unpaid taxes." *United States v. Schulz*, 517 F.3d 606, 607-08 (2d Cir. 2008). Without a customer list, it is unlikely that the government will identify each of Benson's customers who followed his advice before the statute of limitations has run. Benson will not be harmed by identifying his customers and it will serve the public interest for the government to receive a full list of Benson's customers, both to warn them of the falsity and ineffectiveness of Benson's claims, and to enforce the income tax laws. Production of Benson's customer list is also proper to monitor compliance with the injunction's requirement that Benson "mail . . . a copy of the injunction order to every person and entity to whom he sold or furnished

---

[4] Section 7402(a) makes clear that the remedies it provides "are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce" the tax laws. The government was not required to seek the customer list through an administrative process as Benson argues.

the [Packages]." *See id.* We note that this is not the first time a promoter of false tax schemes has been required to divulge his customer list. *E.g. United States v. Bell*, 414 F.3d 474, 485 (3d Cir. 2005); *Schulz*, 517 F.3d at 607-08; *United States v. Kotmair*, Civ. No. WMN-05-1297, 2006 WL 4846388 at *7-8 (D. Md. Nov. 29, 2006), *aff'd*, 234 Fed. Appx. 65, 65-66 (4th Cir. 2007); *United States v. Harkins*, 355 F. Supp. 2d 1175, 1182 (D. Or. 2004); *United States v. Stephenson*, 313 F. Supp. 2d 1054, 1061 (W.D. Wash. 2004).

Such an order will not infringe on the First Amendment rights of Benson's customers. Benson's attempt to analogize this case to *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) is misplaced. Benson operated an Internet marketing scheme, not a membership organization. As in *Bell*, 414 F.3d at 485, Benson's "operation was primarily a commercial enterprise, not a political group. Producing a customer list does not offend the First Amendment because commercial transactions do not entail the same rights of association as political meetings." Benson's claim that divulging his customer list will violate his customers' right to receive and read what they choose also falls short. The government acknowledges that Benson's customers are free to receive, possess, read, and speak about materials from Benson and others challenging the validity of the Sixteenth Amendment or protesting the federal tax system. Additionally, as the government suggests, we expect the district court to enter an appropriate protective order to prevent public disclosure of the customers' identities.

Finally, Benson's Fifth Amendment claim need not delay us because the government asked the district court to issue an order of immunity in connection with

Benson's compelled act of producing his customer list. The government's brief indicates that it remains open to this solution and we expect the district court to issue such an order upon remand, thereby eliminating Benson's Fifth Amendment claim.

III. CONCLUSION

For the reasons discussed above, we AFFIRM the injunction imposed by the district court, but REVERSE as to the customer list, and REMAND for further appropriate proceedings.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604
Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

April 6, 2009

BEFORE: WILLIAM J. BAUER, Circuit Judge
KENNETH F. RIPPLE, Circuit Judge
TERENCE T. EVANS, Circuit Judge

Nos.: 08-1312 & 08-1586	UNITED STATES OF AMERICA, Plaintiff-Appellee, Cross-Appellant, v. WILLIAM J. BENSON, Defendant-Appellant, Cross-Appellee.

Originating Case Information:
District Court No: 1:04-cv-07403 Northern District of Illinois, Eastern Division Court Reporter Laura LaCien Clerk/Agency Rep Michael W. Dobbins District Judge Samuel Der-Yeghiayan

The injunction imposed by the district court is **AFFIRMED**, but **REVERSED** as to the customer list, and the case is **REMANDED** for further appropriate proceedings, in accordance with the decision of this court entered on this date. Defendant-Appellant William Benson to bear the costs.

form name: **c7_FinalJudgment** (form ID: **132**)

APPENDIX B

United States District Court,
Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Samuel Der-Yeghiayan	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	04 C 7403	**DATE**	1/16/2008
CASE TITLE	USA vs. William J Benson		

DOCKET ENTRY TEXT

For the reasons stated below, Defendant William Benson's motions to reopen [124], to alter judgment [121] and for extension of time to comply and for clarification [131] are denied. The unnamed intervenors' motion to alter or amend judgment [128] is denied. The Government's motion to alter judgment [119] is denied.

■[For further details see text below.]
Docketing to mail notices.

STATEMENT

This matter is before the court on William J. Benson's ("Benson") motion to reopen. Benson requests that the court reopen the instant action to enable the court to consider his motion to alter or amend judgment. However, a motion to alter or amend judgment can be brought after the termination of an action, without reopening the case. Thus, there is no need to have a case reopened before considering Benson's motion to alter or amend judgment. Therefore, we deny Benson's motion to reopen as moot.

This matter is also before the court on Benson's motion to alter or amend judgment. On December 17, 2007, we granted the Plaintiff's ("Government") motion for summary judgment and on January 10, 2008, we entered a permanent injunction in this case. Benson requests that the court vacate the December 17, 2007 ruling and January 10, 2008 order. Benson has not presented any new arguments or evidence or shown that the court erred in the December 17, 2007 ruling or the January 10, 2008 order and we deny Benson's motion to alter or amend judgment.

This matter is also before the court on the Government's motion to alter or amend judgment. We entered a permanent injunction on January 10, 2008, but we did not include the provision requested by the Government requiring Benson to provide the Government with a list of the names of Benson's customers. The Government requests that the court amend the permanent injunction to require Benson to disclose the names of his customers. As we indicated in the January 10, 2008 ruling, the customer list is not related to preventing future misconduct by Benson.

The Government brought the instant action to prevent Benson from further marketing the Reliance Defense Package and inciting others to disobey the federal tax laws. Obtaining Benson's prior customer list would not necessarily facilitate such a goal. Nor should Benson's customers, who the Government itself depicts as victims, be branded as potential co-conspirators with Benson and tax cheats solely because they bought the Reliance Defense Package or related package. Of course, if the Government encounters any customer of Benson who violated tax laws, the Government would be in the right to take action against such an individual. In the instant action, the Government has established that Benson is the wrongdoer and the court has ruled in favor of the Government relating to the claims brought against Benson. The request by the Government for the customer list is beyond the scope of Benson's wrongdoing in the instant action, and absent a compelling reason given by the Government for its disclosure, the request cannot be granted. The other aspects of the injunctive relief sought by the Government are reasonable and sufficient to deter Benson from continuing his illegal tax scheme. The Government has not shown in its motion to alter or amend judgment that the court erred in denying its request to include the customer list requirement in the permanent injunction and the Government has not provided sufficient justification to warrant altering the permanent injunction. Therefore, we deny the Government's motion to alter or amend judgment.

This matter is also before the court on Benson's motion for an extension of time to comply with the permanent injunction and for clarification. The Government correctly notes that Benson is actually seeking a stay of the permanent injunction rather than

merely an extension of time to comply. Benson has not provided sufficient justification for either a stay of the permanent injunction or an extension of time for compliance. The dates for compliance specified in the permanent injunction stand. Benson also seeks clarification in regards to his Fifth Amendment right to avoid self-incrimination. However, he does not seek the clarification of any portion of the permanent injunction, which is clear. It is not appropriate for him to seek legal counsel from the court on such an issue. Therefore, we deny the motion for an extension and motion for clarification.

This matter is also before the court on unnamed intervenors' motion to alter or amend judgment. The intervenors are concerned that Benson, in filing the affidavit of compliance with the permanent injunction, will list the names of the customers to whom he mailed the required notices. Benson is only required to file an affidavit with the court swearing that he complied with each requirement of the permanent injunction. Nothing in the injunction order requires Benson to attach the names of customers that were mailed the notices. The court may require Benson to file information in camera to ensure that he has complied with the court's order. Therefore, we deny as moot the intervenors' motion to alter or amend.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 04 C 7403
Judge Samuel Der-Yeghiayan

[Filed January 10, 2008]

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
WILLIAM J. BENSON, individually and d/b/a Constitutional Research Associates,	)
	)
Defendant.	)

PERMANENT INJUNCTION

On December 17, 2007, the Court granted the Government's motion for summary judgment in this action for an injunction under sections 7408 and 7402 of the Internal Revenue Code (IRC) (26 U.S.C.) [106]. In accordance with Rule 65 of the Federal Rules of Civil Procedure and the Court's opinion of December 17, 2007, the Court makes the following findings of

fact and enters a permanent injunction against the defendant, William J. Benson, individually and doing business as Constitutional Research Associates.

Findings of Fact and Conclusions of Law

1. The defendant, William I. Benson, sells the "Reliance Defense Package" and "16th Amendment Reliance Package" on his website. The Reliance Defense Package and the 16th Amendment Reliance Package contain false statements concerning the payment of federal taxes, including statements that purchasers are not required to file tax returns or pay federal taxes because the Sixteenth Amendment to the Constitution was never ratified. These false statements are material within the meaning of Section 6700.

2. Benson falsely tells customers that if they purchase and use his products they will be shielded from criminal prosecution for violating the internal revenue laws. Purchasers of the "Reliance Defense Package" receive a letter signed by Benson that falsely represents that the purchaser can rely on Benson's research to conclude that the Sixteenth Amendment was not ratified, and that the purchaser is thereby not required to file federal income tax returns or pay federal income or social security taxes to the United States. As in *United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000), *cert. den.*, 533 U.S. 902 (2001), Benson's "Reliance" packages constitute a "plan or arrangement" within the meaning of Section 6700.

3. In *United States v. Benson*, 941 F.2d 598, 607 (7th Cir. 1991), the Seventh Circuit explicitly rejected Benson's arguments that the Sixteenth Amendment

was improperly ratified. In view of his prior convictions for tax evasion and failure to file tax returns, and the decisions of the Seventh Circuit that refute the central concept of Benson's "Reliance Defense Package" (his claim that the Sixteenth Amendment was never ratified), the Court finds that Benson knew or had reason to know that his statements in promoting the Reliance Defense Package were false or fraudulent. Benson has thus engaged in conduct subject to penalty under Section 6700.

4. From the pleadings and documents that Benson has filed in this Court, it is clear that Benson has never acknowledged the wrongfulness of his actions in promoting his "Reliance Defense Package." Despite the fact that Benson removed his "Reliance Defense Package" from his website after the Government brought the present injunction and after the Government moved for a preliminary injunction in 2004, the Court finds that Benson is likely to continue to engage in conduct subject to penalty under Section 6700 in the future in the absence of an injunction. It is therefore appropriate to permanently enjoin him under Section 7408 from organizing, promoting, or selling his "Reliance Defense Packages" and "16th Amendment Reliance Packages," and from engaging in any other conduct subject to penalty under Section 6700

5. Benson's conduct has caused substantial revenue loss to the Treasury, and will require the IRS to expend considerable resources to assess and collect the federal taxes owed by his customers. His actions will also likely cause his customers to incur penalties because of their failure to report and pay their federal tax liabilities.

6. By promoting the "Reliance Defense Packages" and "16th Amendment Reliance Package," Benson has engaged in conduct that substantially interferes with the administration of the internal revenue laws.

7. The Court finds that Benson should be permanently enjoined under Section 7402(a) from engaging in conduct that interferes with the administration or enforcement of the internal revenue laws.

Permanent Injunction

The defendant, William J. Benson, individually and doing business as Constitutional Research Associates, and anyone in active concert or participation with him, are permanently enjoined from:

(a) promoting, organizing or selling the "Reliance Defense Package" or "16th Amendment Reliance Package," which are abusive tax shelters, plans, or arrangements that advise or assist customers to attempt to evade the assessment or collection of their correct federal tax;

(b) promoting, organizing or selling (or helping others to promote, organize, or sell) any other tax shelter, plan, or arrangement that incites or assists others to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities or unlawfully claim improper tax refunds;

(c) making or furnishing (in connection with organizing, promoting, or selling any plan or arrangement) false statements about the excludability of any income or the securing of any other tax benefit by reason of participating in the plan or arrangement;

(d) engaging in any other activity subject to penalty under the Internal Revenue Code; and

(e) engaging in any other conduct that interferes with the administration or enforcement of the internal revenue laws.

In accordance with Section 7402(a), the defendant, William J. Benson, individually and doing business as Constitutional Research Associates, is ordered to do the following:

(f) within 14 days of the entry of this permanent injunction, mail (by United States mail, and, if an e-mail address is known, by electronic mail) a copy of the injunction order to every person and entity to whom he sold or furnished the "Reliance Defense Package" or "16th Amendment Reliance Package";

(g) within 10 days of the entry of this permanent injunction, remove from his website www.thelawthatneveiwas.com all references to selling the Reliance Defense Package or 16th Amendment Reliance Package and any other false statements about the benefits of using the Reliance

Defense Package or 16th Amendment Reliance Package;

(h) post, in not less than 12-point type at the top of the first page of www.thelawthatneverwas.com, a copy of this injunction order; and

(I) file with the this Court an affidavit or declaration detailing his compliance with the requirements set forth above in subparagraphs (f) through (h), above, within 18 days of the entry of this permanent injunction.

It is SO ORDERED this 10th day of January, 2008.

/s/
Samuel Der-Yeghiayan
United States District Judge

Prepared and submitted by:

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/s/ Robert D. Metcalfe
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APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 04 C 7403

[Filed December 17, 2007]

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
v.	)
	)
WILLIAM J. BENSON,	)
	)
Defendant.	)
	)

MEMORANDUM OPINION

SAMUEL DER-YEGHIAYAN, District Judge

This matter is before the court on Plaintiff United States of America's ("Government") motion for summary judgment. For the reasons stated below, we grant the motion for summary judgment.

BACKGROUND

The Government alleges that Defendant William J. Benson ("Benson") conducts business as Constitutional Research Associates ("CRA"). CRA allegedly has a website that markets a "Reliance Defense Package" ("Reliance Defense Package") that contains advice in regard to filing federal tax returns. Benson also allegedly marketed a condensed version of the Defense Package on a website run by The Free Enterprise Society. The Government contends that Benson falsely informs customers in the Reliance Defense Package that the federal income tax is unconstitutional. Benson allegedly includes in the Reliance Defense Package letters and DVDs that contend that the Sixteenth Amendment of the United States Constitution was not properly ratified. Benson also allegedly falsely informs his customers that the Internal Revenue Service ("IRS") has refused to prosecute any person that refused to pay taxes based upon the position provided in the Reliance Defense Package. According to the Government, Benson himself was prosecuted and convicted for failing to file federal income tax returns and evading taxes.

The Government asserts that the public has been harmed because Benson's customers have paid significant sums for worthless and erroneous tax advice. The Government also contends that the public is harmed because citizens that followed Benson's advice have not been paying their fair share of taxes to the United States Treasury. The Government brought the instant action and includes in the complaint a claim alleging that Benson organized or sold an investment plan that had false or fraudulent advice as to tax consequences in violation of 26 U.S.C. § 6700

("Section 6700") and seeking an injunction under 26 U.S.C. § 7408 ("Section 7408") due to Section 6700 violation (Count I). The complaint also includes a claim alleging unlawful interference with the enforcement of the internal revenue laws and seeking an injunction under 26 U.S.C. § 7402(a) ("Section 7402(a)") (Count II). This case was originally before another judge in this district. The Government moved for summary judgment on both counts and this case was subsequently reassigned to the undersigned judge on November 19, 2007.

LEGAL STANDARD

Summary judgment is appropriate when the record, viewed in the light most favorable to the non-moving party, reveals that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In seeking a grant of summary judgment, the moving party must identify "those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)(quoting Fed. R. Civ. P. 56(c)). This initial burden may be satisfied by presenting specific evidence on a particular issue or by pointing out "an absence of evidence to support the non-moving party's case." *Id.* at 325. Once the movant has met this burden, the non-moving party cannot simply rest on the allegations in the pleadings, but, "by affidavits or as otherwise provided for in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). A "genuine issue" in the context of a motion for summary judgment is not

simply a "metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, a genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Insolia v. Philip Morris, Inc.*, 216 F.3d 596, 599 (7th Cir. 2000). The court must consider the record as a whole, in a light most favorable to the non-moving party, and draw all reasonable inferences that favor the non-moving party. *Anderson*, 477 U.S. at 255; *Bay v. Cassens Transport Co.*, 212 F.3d 969, 972 (7th Cir. 2000).

DISCUSSION

I. Motion to Strike and Motion to Have Facts Deemed Admitted

On December 20, 2005, after the Government had moved for summary judgment, Benson filed a motion to strike and motion to have facts deemed admitted. On August 15, 2006, the prior judge in this case denied the motion to strike and the motion to have facts deemed admitted. We will discuss that ruling in detail, since it applies directly to the Government's pending motion for summary judgment and since we are bound by the law of the case doctrine. *See Minch v. City of Chicago*, 486 F.3d 294, 301 (7th Cir. 2007)(stating that "[a]mong other things, the law of the case doctrine embodies the notion that a court ought not to re-visit an earlier ruling in a case absent a compelling reason, such as manifest error or a change in the law, that warrants re-examination" and that "[t]he presumption holds when a case is reassigned from one judge to another").

A. Motion to Have Facts Deemed Admitted

Benson moved to have Paragraphs 31-51 of his statement of additional material facts ("Paragraphs 31-51") deemed admitted pursuant to Local Rule 56.1. The prior judge noted that Paragraphs 31-51 relate to Benson's claims that the Sixteenth Amendment was not properly ratified. (08/15/06 OR 2). The Government responded to Paragraphs 31-51 by objecting to the facts, arguing that the assertions that the Sixteenth Amendment was not properly ratified were "irrelevant, immaterial, impertinent and scandalous." (R SAF Par. 31-51). The Government also indicated that Benson is collaterally estopped from challenging the validity of the Sixteenth Amendment as a result of the decision in *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991). (R SAF Par. 31-51). The prior judge made clear that, in regard to the ratification of the Sixteenth Amendment, "Mr. Benson, if appropriate, will have a chance to present evidence as to other open issues - but one of those issues will not be whether the [S]ixteenth [A]mendment is a valid part of the U.S. law." (8/15/06 OR 5). The prior judge in this case denied Benson's motion to deem facts admitted, concluding that the facts in Pargagraphs 31-51 contained immaterial and inadmissible allegations and that the Government's response to Paragraphs 31-51 was appropriate. (08/15/06 OR 5-6) The prior judge also concluded that the Government's response was proper, and that the response should not be stricken. (08/15/06 OR 6). Thus, the facts in Pargagraphs 31-51 are not deemed to be admitted pursuant to Local Rule 56.1

B. Motion to Strike

Benson moved to "strike those portions of the [Government's] [r]eply [b]rief that fail to sufficiently state any defense to Benson's arguments contained in his Opposition to the Government's Motion for Summary Judgment" and to strike Pargagraphs 31-51. (Mot. Deem/Strike 1). Benson argued that the Government, in its reply brief, seeks to have this case decided by "unconstitutional and illegal methodology." (Mot. Deem/Strike 2). The prior judge concluded that the motion to strike lacked merit and denied the motion. (08/15/06 OR 6). Thus, no portion of the Government's reply brief or its response to Benson's statement of additional facts have been stricken.

II. Promoting Plan that Contains False and Fraudulent Tax Advice (Count I)

The Government argues that the court should enjoin Benson from promoting the Reliance Defense Package since it is an abusive tax scheme. Pursuant to 26 U.S.C. § 7408(a), "[a] civil action in the name of the United States to enjoin any person from further engaging in specified conduct . . . may be commenced at the request of the Secretary." 26 U.S.C. § 7408(a). The "specified conduct" referred to in 26 U.S.C. § 7408(a) ("Section 7408(a)") includes "any action, or failure to take action, which is . . . subject to penalty under" 26 U.S.C. § 6700. 26 U.S.C. § 7408(a). Pursuant to § 6700:

> Any person who –
> (1)(A) organizes (or assists in the organization of)--
> (I) a partnership or other entity,
> (ii) any investment plan or arrangement, or

> (iii) any other plan or arrangement, or
> (B) participates (directly or indirectly) in the sale of any interest in an entity or plan or arrangement referred to in subparagraph (A), and
> (2) makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)--
> (A) a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter . . . shall pay, with respect to each activity described in paragraph (1) [a civil penalty] . . . .

26 U.S.C. § 6700. *See also United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000)(stating that "[i]n order to establish a violation of 26 U.S.C. § 6700, the Government must prove '(1) that the defendant was involved in an abusive tax shelter, and (2) that the defendant made statements about the tax benefits investors would receive if they participated in the shelter which the defendant knew or had reason to know were false or fraudulent'")(quoting in part *United States v. Kaun*, 827 F.2d 1144, 1147 (7th Cir. 1987)).

A. Organization and Sale of Plan or Arrangement

The Government contends that the undisputed facts show that Benson was a person who organized and sold an investment plan or arrangement. A "plan or arrangement," under Section 6700 that has "some connection to taxes can serve as a 'tax shelter' and will

be an 'abusive' tax shelter if the defendant makes the requisite false or fraudulent statements concerning the tax benefits of participation." *Raymond*, 228 F.3d at 811 (7th Cir. 2000). An "abusive tax shelter" for the purpose of Section 6700, is defined as "any entity whose principal purpose is the avoidance or evasion of federal income tax." *Kaun*, 827 F.2d at 1149.

Benson admits, pursuant to Local Rule 56.1, that he sells the Reliance Defense Package on his website. (R SF Par. 10). Benson also admits that the premise of the Reliance Defense Package is that, due to the alleged improper ratification of the Sixteenth Amendment, United States citizens are not obligated to pay federal income taxes. (R SF Par. 12). Benson thus admits that the Reliance Defense Package contains statements concerning the payment of federal taxes. Benson also admits that he sells the Reliance Defense Package to others, furnishing others with the information. (R SF Par. 10).

In *Raymond*, the Seventh Circuit was presented with a program called the "De-Taxing America Program." 228 F.3d at 811. The Reliance Defense Package is similar to the program at issue in *Raymond*, which also "assured readers that the federal government is without authority to tax them and that by following the instructions outlined in the Program individuals c[ould] legally refuse to pay federal income and social security tax." *Id.* The court in *Raymond* concluded that the "De-Taxing America Program" constituted an abusive tax shelter, which fell within the Section 6700 definition for a "plan or arrangement." *Id.* at 812. Likewise, the Reliance Defense Package at issue in this case assures readers that they do not need to pay federal taxes and falls

within the Section 6700 of "plan or arrangement." Thus, Benson admits that he sold the Reliance Defense Package. We conclude as a matter of law that the Reliance Defense Package constitutes an abusive tax shelter, which falls under the Section 6700 definition for a plan or arrangement.

B. False or Fraudulent Statements Regarding Tax Benefits

The Government argues that the Reliance Defense Package contains statements concerning material matters regarding the non-payment of federal income taxes. Benson disputes that the statements in the Reliance Defense Package were false. However, Benson has failed to point to evidence that would create a genuinely disputed fact regarding whether the Sixteenth Amendment was properly ratified or whether United States Citizens are legally obligated to pay federal taxes. Also, as is indicated above, Benson is precluded in this action from taking the position that the Sixteenth Amendment was not properly ratified. (8/15/06 OR 5). Thus, in the absence of sufficient evidence to support the veracity of Benson's statements in the Reliance Defense Package and his preclusion from taking a position in this action consistent with the information in the Reliance Defense Package, the Reliance Defense Package is deemed to have false and fraudulent advice concerning the payment of federal taxes. Benson acknowledges that Seventh Circuit precedent clearly holds that his legal advice regarding the non-payment of federal taxes is false, and Benson argues that such precedent "can no longer be considered valid law." (Ans. 6). However, the Seventh Circuit precedent is still valid and binding precedent and Benson's position remains

an untenable one. Thus, no reasonable trier of fact could conclude other than that the Reliance Defense Package contained false and fraudulent tax advice.

C. Whether Benson Knew or Had Reason to Know of Falsity

The Government argues that Benson knew or had reason to know that the Reliance Defense Package contained false or fraudulent information concerning tax advice. Benson has not pointed to evidence that contradicts the Government's assertion that Benson himself was prosecuted and convicted for failing to file federal returns while pursuing the very defense that he advocates in the Reliance Defense Package. Benson also admits that the Reliance Defense Package contains a copy of the decision in *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991). (R SF Par. 22). In *Benson*, the Seventh Circuit explicitly rejected Benson's arguments that the Sixteenth Amendment was not properly ratified. *Id.* at 607. Thus, the undisputed evidence shows that Benson had actual knowledge that the information in the Reliance Defense Package was false or fraudulent. Benson has also failed to explain how he could have reasonably believed his statements in the Reliance Defense Package to be true and lawful when his position had been previously rejected by the courts. *United States v. Dunkel*, 927 F.2d 955, 955 (7th Cir. 1991)(stating that in "*Cheek v. United States*, 498 U.S. 192 . . . (1991), the Supreme Court . . . held that district judges may rebuff defenses based on erroneous constitutional beliefs (such as that the 16th Amendment was not properly ratified)"); *United States v. Thomas*, 788 F.2d 1250, 1253-54 (7th Cir. 1986)(stating that whether the Sixteenth Amendment was properly ratified "is now

beyond review"). Therefore, no reasonable trier of fact could conclude other than that Benson had actual and constructive knowledge of the fact that the Reliance Defense Package contained statements concerning tax advice that were false and misleading.

D. Whether Statements were Material

The Government contends that the false and fraudulent statements made by Benson in the Reliance Defense Package related to a material matter under Section 6700. Benson's advice did not concern a minor nuance in tax law that could be interpreted as advice to pay less taxes. Rather, Benson admits that the Reliance Defense Package explains to the customers that they are relieved of the obligation to pay federal income taxes. (R SF Par. 12). Thus, Benson's advice strikes at the heart of the tax issue, advising customers that they do not have to pay taxes at all and such advice clearly involves material matters under Section 6700. Thus, based on the above, no reasonable trier of fact could conclude other than that Benson violated Section 6700.

E. Injunctive Relief under Section 7408(a)

The Government seeks injunctive relief under Section 7408(a), in part, enjoining Benson from further marketing the Reliance Defense Package. As indicated above, pursuant to Section 7408(a), the court can enjoin an individual that engages in conduct that violates Section 6700. Injunctive relief under Section 7408(a) is proper if the defendant engaged in conduct that violated Section 6700 and "is appropriate to prevent recurrence of such conduct. . . ." 26 U.S.C. § 7408(b). We have found above as a matter of law that

Benson violated Section 6700. When determining whether to grant injunctive relief for a Section 6700 violation and "[i]n predicting the likelihood of future violations, a court must assess the totality of the circumstances surrounding the defendant and his violation, including such factors as the gravity of harm caused by the offense; the extent of the defendant's participation and his degree of scienter; the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transaction; the defendant's recognition of his own culpability; and the sincerity of his assurances against future violations." *Kaun*, 827 F.2d at 1149-50.

In the instant action, an assessment of the factors listed above heavily favor granting the Government's request for injunctive relief under Section 7408(a). The Government has presented undisputed evidence that shows that as a result of Benson's violations of Section 6700, the United States Treasury has been improperly deprived of revenues. For example, the Government has included with its motion for summary judgment, an affidavit by an IRS employee indicating that Ronald K. Doyle ("Doyle") refused to pay federal taxes based upon the advice from Benson in the Reliance Defense Package. (Howell Decl. Par. 12);(R SF Par. 12). Benson also admits that when the IRS asked Doyle for the basis for his refusal to pay taxes, Doyle indicated that he relied in part on the condensed version of the Reliance Defense Package. (R SF Par. 17). Benson also admits that he has sold the Reliance Defense Package or related packages to other individuals identified by the Government that in turn incorrectly believed that they did not have to pay federal taxes and refused to pay taxes. (R SF Par. 23-25). Benson also admits that

he has marketed his Reliance Defense Package on multiple websites and that he charged each customer $3,500 for each Reliance Defense Package and $250 for each condensed version. (R SF Par. 10, 13, 17).

The undisputed evidence also shows that Benson himself has been found to have violated federal tax laws after taking the same meritless position that he attempts to sell to others. (R SF Par. 6-8). The record clearly indicates that Benson knowingly and intentionally violated Section 6700. Although Benson indicates in his answer to the motion for summary judgment that he is willing to agree to cease promoting the Reliance Defense Package, (Ans. 12), we agree with the Government that the record indicates that Benson is likely to continue to violate Section 6700. There is nothing that would indicate that Benson intends to change his opinions or his conduct in leading other citizens astray with false and fraudulent information. Benson acknowledges binding precedent that shows that his conduct is unlawful and Benson continues in response to the instant motion to refuse to accept the law, arguing that it should no longer be considered valid. (Ans. 6). This refusal to recognize the law by Benson is an indication that Benson will continue to violate the law in the future. Benson also continues to depict himself as someone that will persevere and not relent in his position, and has the audacity to compare himself to past civil rights leaders that refused to be defeated in pursuing their goals. (Ans. 15). Therefore, based on the above, we grant the motion for injunctive relief under Section 7408(a).

III. Unlawful Interference with the Enforcement of the IRS Laws

The Government argues that the undisputed facts shows that Benson unlawfully interfered with the enforcement of IRS law and that the Government is entitled to injunctive relief under Section 7402(a).

A. Interference with Enforcement of IRS Laws

Benson admits that he sells his Reliance Defense Package, which informs customers that they do not have to pay federal taxes. (R SF Par. 12). Such an assertion if followed by Benson's customers, would cause them to fail to comply with IRS laws. Benson purported to provide his customers with a defense to assert when confronted by IRS agents attempting to enforce the IRS law, and the fraud perpetrated by Benson caused needless confusion and a waste of the customers' and the IRS' time and resources. Benson's false legal advice caused his customers to fail to pay taxes and to incur resulting penalties as a result. Benson should have also known that his customers may be subject to charges for violating the law, just like he was, as a result of following his advice. Thus, the undisputed facts unquestionably show that Benson unlawfully interfered with the enforcement of IRS laws.

B. Injunctive Relief under Section 7402(a)

Defendants seek injunctive relief under Section 7402(a) to prevent further interference with the enforcement of IRS laws. Section 7402(a) provides the following:

> The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

26 U.S.C.§ 7402(a). As explained above, the undisputed facts show that Benson has interfered with the enforcement of IRS laws. In addition, as is explained above in regard to the Section 6700 violations, there is every indication that Benson will continue with the same course of conduct and continue to market the Reliance Defense Package or engage in other actions to promote his belief that United States citizens are not required to pay federal taxes. Therefore, in addition to Section 7408(a), which is discussed above, Section 7402(a) also provides a valid basis for the injunctive relief sought by the Government in this case.

IV. Scope of Injunctive Relief

The Government seeks an injunction providing that Benson and those acting in concert with him are prohibited from: (1) promoting, organizing, or selling the Reliance Defense Package or any other abusive tax shelter plan or arrangement that incites citizens to not pay their taxes, (2) making false statements about the excludability of any income, or the securing of any tax

benefit by reason of participating in tax shelters, plans, or arrangements, (3) engaging in any conduct that violates Section 6700, and (4) engaging in conduct that substantially interferes with the proper administration of the internal revenue law. (Mem. Dis. 16). The Government also requests that the court order Benson to provide the Government with a list of the names and addresses of the customers that purchased the Reliance Defense Package or other versions of the package. (Mem. Dis. 16). In addition, the Government asks the court to order Benson to: (1) send a copy of the injunction to the customers that purchases the Reliance Defense Package or other versions of the Reliance Defense Package, (2) remove all references from Benson's websites referring to the Reliance Defense Package or other versions of the package, (3) post a copy of the injunction on his website, and (4) file an affidavit with the court indicating that he has complied with the terms of the injunction. (Mem. Dis. 16-17).

A. First Amendment Right to Freedom of Speech

Benson argues that the Government cannot obtain an injunction prohibiting Benson from promoting, organizing, or selling the Reliance Defense Package since the injunction would violate his First Amendment right to free speech. This same argument was raised in *Raymond* in regard to a program called the "De-Taxing America Program," which is similar to the Reliance Defense Package. 228 F.3d at 811. The Court in *Raymond* rejected the argument, indicating that an injunction curtailing the defendant's persuasion of others through the "De-Taxing America Program" did not violate the defendant's First Amendment rights as long as "it clearly applie[d] only

to activities that incite others to violate the tax laws." *Id.* at 815. The Court held that "[i]ncitement to imminent unlawful activity is unprotected speech . . . and an individual may be enjoined from engaging in it." *Id.* The Court also held that the portion of the injunction barring the marketing of the "De-Taxing America Program" did not violate the First Amendment because the court read the injunction "to prohibit only false, deceptive or misleading commercial speech that is related to the provision of tax advice" and "[i]t is permissible for the government to prevent the dissemination of false or misleading commercial speech." *Id.* In the instant action, the injunctive relief sought by the Government is limited in scope and is narrowly tailored to prevent Benson from inciting others to violate tax laws and from providing customers with false or misleading advice. Thus, Benson has not shown that the injunctive relief in the instant action would violate his First 18 Amendment right to free speech. We are also mindful of the admonition in *Raymond* that a district court should "wherever possible . . . craft injunctions that are not in need of narrowing constructions by" the Seventh Circuit and that a district court should draft an injunction that "[i]s narrowly tailored to prohibit only those activities that can be restrained consistent with the First Amendment." *Id.* at 816.

B. Benson's Customer List

The Government seeks as part of its injunctive relief an order requiring Benson to turn over a list of the names and addresses of customers that purchased the Reliance Defense Package or another version of the package. Benson argues that he should not have to turn over the list because it would violate his First

Amendment right to association. Benson also argues that to require him to provide the customer list would force him to give up his right to remain silent in violation of his Fifth Amendment rights. However, we need not resolve these constitutional issues since the Government has not shown that the request for the customer list is appropriate injunctive relief in light of the claims and allegations in this case. A significant concern raised by the Government's request is the rights and welfare of the customers of Benson. The sole basis provided by the Government for its request for the disclosure of the customer list is the need of the Government to ensure that the customers paid their taxes. (Reply 9). The Government indicates that it intends to investigate the customers to make sure that they have properly paid their taxes. (Reply 9). Benson's customers, however, violated no laws simply by purchasing the Reliance Defense Package or related package. Nor can it be assumed that Benson's customers did not pay their taxes merely because they purchased the Reliance Defense Package or related package. The Government itself in arguing that Benson has distributed fraudulent and misleading information to his customers has depicted the customers as victims of Benson. The Government also alleges that the customers were victimized, stating that "Benson's customers have been harmed . . .because his customers have paid him significant sums for worthless advice. . . ." (Compl. Par. 15). The Government has not provided a compelling reason why Benson's customer list should be disclosed and the customers be investigated and scrutinized by the Government solely because they bought the Reliance Defense Package or related package.

The customer list is not related to preventing future misconduct by Benson. The Government is bringing the instant action to prevent Benson from further marketing the Reliance Defense Package and inciting others to disobey the federal tax laws. The Government has made clear that its main concern in bringing this action is to enjoin Benson from future conduct and "end his scheme" since United States taxpayers "will continue to lose money as long as Benson is operating." (Mem. Dis. 14). Obtaining Benson's prior customer list would not necessarily facilitate such a goal. Nor should Benson's customers, who the Government itself depicts as victims, be branded as potential co-conspirators with Benson and tax cheats solely because they bought the Reliance Defense Package or related package. Of course, if the Government encounters any customer of Benson who violated tax laws, the Government would be in the right to take action against such individuals. The request by the Government for the customer list is beyond the scope of Benson's wrongdoing in the instant action, and absent a compelling reason given by the Government for its disclosure, the request cannot be granted. The other aspects of the injunctive relief sought by the Government are reasonable and sufficient to deter Benson from continuing his illegal tax scheme. Therefore, based on the above, we grant the Government's motion for summary judgment and grant the request for injunctive relief except for the production of the customer list.

V. Miscellaneous Pending Motions

There are several other miscellaneous outstanding motions in this case filed while the instant motion for summary judgment was pending. The Government has

filed a motion for order of immunity. The Government seeks to require Benson to give testimony at a deposition and to provide records concerning his illegal tax advice activities. The Government promises to provide Benson with immunity from prosecution to negate concerns about his right against self-incrimination. The Government states that it intends to depose Benson to identify citizens that could potentially have failed to pay taxes and to investigate such individuals. However, as indicated above, the information sought by the Government is not appropriate relief in this case. We have granted the Government's motion for summary judgment. Even though we believe that the IRS has every right and responsibility to identify and prosecute those that do not follow the tax laws, continued discovery in this matter, including depositions, after the conclusion of this case would be beyond the scope of these proceedings. Therefore, the motion for an order of immunity is moot.

The Government has filed a motion for a telephonic status hearing. We have granted the Government's motion for summary judgment, terminating this action and thus there is no present need to schedule a status hearing. Therefore, we deny the motion for a telephonic status hearing as moot.

Anonymous individuals have filed a motion to intervene and Benson and the proposed anonymous intervenors have also filed a motion for a protective order. Benson and the proposed intervenors request a protective order preventing the Government from taking Benson's deposition and producing the requested information. As indicated above, the injunctive relief granted in this case does not include

a deposition of Benson or the production of information. Therefore, we deny as moot the motion for a protective order and motion to intervene.

Finally, Benson has filed a motion "for the court to exercise its equity jurisdiction." (Mot. Equ. 1). Benson argues that this court can use its equitable powers to determine whether the Sixteenth Amendment was properly ratified and to require the Government to prove otherwise. As indicated above, under the law, Benson's position is untenable. To the extent that equities can be considered they weigh in favor of the Government. Benson's position has no merit and he has used his fraudulent tax advice to deceive other citizens and profit from it. Benson has refused to pay fair share of his federal taxes, which support our country. Benson has willfully and repeatedly flaunted the laws and offers no equitable justifications for finding other than that he has violated Section 6700 and that the equitable relief approved above is appropriate and necessary. Benson has not presented any arguments in his motion "for the court to exercise its equity jurisdiction" that warrant other than granting the Government's motion for summary judgment and we deny his motion. (Mot. Equ. 1).

CONCLUSION

Based on the foregoing analysis, we grant the Government's motion for summary judgment. We also grant the Government's motion for injunctive relief except for the request for the customer list. We also deny as moot the Government's motion for order of immunity, the Government's motion for a telephonic status hearing, the motion to intervene, and the motion for a protective order. Finally, we deny

Benson's motion "for the court to exercise its equity jurisdiction."

/s/
Samuel Der-Yeghiayan
United States District Court Judge

Dated: December 17, 2007

APPENDIX E

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Nos. 08-1312 and 08-1586

[Filed July 21, 2009]

Before

WILLIAM J. BAUER, *Circuit Judge*

KENNETH F. RIPPLE, *Circuit Judge*

TERENCE T. EVANS, *Circuit Judge*

UNITED STATES OF AMERICA,	)
Plaintiff-Appellee,	)
Cross-Appellant,	)
	)
v.	)
	)
WILLIAM J. BENSON,	)
Defendant-Appellant,	)
Cross-Appellee.	)
	)

Appeals from the United States Court for the Northern District of Illinois, Eastern Division.
No. 04 C 7403
Samuel Der-Yeghiayan, *Judge*.

ORDER

On consideration of the petition for rehearing *en banc* filed by defendant-appellant/cross-appellee on May 6, 2009, in connection with the above-referenced case, no judge in active service has requested a vote on the petition for rehearing *en banc* and all of the judges on the original panel have voted to deny rehearing. It is, therefore, **ORDERED** that the petition for rehearing and rehearing *en banc* is **DENIED**.